IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JAIPUR BENCH, JAIPUR

Seth Vishan Das Satan Mal
Versus
Rajasthan Rajya Sahakari Kraya Vikraya Sangh Ltd., Jaipur-4

S. B. CIVIL FIRST APPEAL NO.141/1987
UNDER ORDER 41 RULE 1 C.P.C.
AGAINST THE JUDGMENT AND DECREE
DATED 28.3.1987 PASSED BY THE
UPPER DISTRICT & SESSIONS JUDGE,
JAIPUR CITY, JAIPUR.

Date of Judgment :: 7th September, 2007

PRESENT

HON'BLE DR. VINEET KOTHARI, J.

Mr. G.C. Lunia for the appellant.
Mr. I.R. Saini for the respondent.

BY THE COURT:

1. Heard learned counsels for the parties.

2. The controversy involved in the present appeal arises out of the suit filed by the plaintiff-appellant for Rs.63,277/- to claim the damages from the defendant – Rajasthan Rajya Sahakari Kraya Vikraya Sangh Limited, Bhawani Singh Marg, Jaipur, on account of loss of goods (potatoes) kept in the cold storage of the defendant,

which according to the plaintiff, he was prevented from taking back for sale in the market on account of strike of the employees of the defendant-Society between the period from 8.8.1972 to 21.8.1972 and consequential loss suffered by him on account of deterioration of quality of the goods as the required temperature was not maintained in the cold storage.

3. During the course of the arguments, both the counsels agreed that there was an arbitration agreement between the parties, which is evident from Ex.69 on record. The said Ex.69 is reproduced hereunder for ready reference:-

Regd.No.945-L/26-11-57
C.S.T.No,650/72 R.S.T.No.347/61

Phone:PBX 9 LINES
64131 &64132 Gram: SAHKARIHAT

Rajasthan Rajya Sahkari Kraya- Vikraya Sangh Ltd.
(REGISTERED UNDER THE RAJASTHAN CO-OPERATIVE SOCIETIES ACT. 1953)
राज -विक्रय संघ लिमिटेड,
गोलीमार गार्डन, भवानी सिंह रोड़, जयपुर

Golimar Garden,
BHAWANI SINGH ROAD,
JAIPUR-4
(Rajasthan)

No.APM/ Dated-
29.11.1972

श्री विशनदास सतनमल से जो किराया एडवांस पेटे के करीब 34,000-00 बाकी रहे व उसके पेटे जो उ33,700-00 रू. का चैक दिया उसके पेमेंट के बारे में तथा उनके दो तरह के अग , 72 की हड़ताल में माल को निकलने के कारण व आज दिनांक 29/11/72 को प्रशासक महोदय, जनरल मैनेजर, वि अधिकारी, मैनेजर को नारायण दास व श्री अर्जुन दास के साथ बात-चीत हुई यह तैय हुआ कि पार्टी 10,000-00रू. रखकर बाकी के रूपये आज ही जमा करवा देगी। **तथा उनके आरबीट्रेटर की हैसियत से एक कमेटी जिसमें** वि , ए प्रशासन, इ श्री नारायण दास होगें **उनकी सुनवाई कर तैय कर देंगे, मामला का फैसला दिनांक 31/12/72 तक कर दिया जावेगा**, उसके बाद जो भी रकम पार्टी को देय निकलेगी उस पर 12% से संघ तथा पार्टी ने जो 10,000-00 रू. रोक कर रखें हैं उस पर आज से पेमेंट की तारीख तक 12% से पार्टीयों ने जो अब तक नोटिस दिये है व जवाब दिये है रद्ध समझे जावेगें तथा आरबीट्रेटर का फैसला दोनों को मंजूर होगा।

ह0/-
जनरल मैनेजर

ह0/-
प्रशासक

ह0/-
मैनेजर
शीतागार, जयपुर

विशनदास सतनमल

Sd/-
General Manager
Rajasthan Rajya Sahakari Kraya Vikraya
Sangh Ltd., JAIPUR.

4. However, both the counsels submitted that the said

arbitration agreement was not carried out and no arbitration award was passed in the matter. They, however, agreed that the matter can still be referred to the arbitration for decision. Learned counsel for the appellant further submitted that the defendant had agreed to give damages of Rs.5,000/- to another similarly situated dealer M/s. Laxmi Aloo Bhandar vide Ex.170 and he has raised Ground No.(AO) in the memo of the appeal in this regard.

Therefore, it was considered appropriate to refer the matter to the arbitrator for expeditious disposal of the dispute between the parties.

5. In this regard reliance was placed by learned counsels on the decision of the Hon'ble Supreme Court in **Agri Gold Exims Ltd. Vs. Sri Lakshmi Knits & Wovens and Others (2007) 3 SCC 686** wherein the Hon'ble Supreme Court referring to its decision in **Rashtriya Ispat Nigam Ltd. Vs. Verma Transport Co. (2006) 7 SCC 275** held as under:-

“16. We need not dilate on the issue as this aspect

of the matter has been considered by this Court in *Rashtriya Ispat Nigam Ltd. v. Verma Transport Co*. wherein this Court noticed: (SCC pp.285-86, paras 24-25)

"24. Section 34 of the repealed 1940 Act employs the expression 'steps in the proceedings'. Only in terms of Section 21 of the 1940 Act, the dispute could be referred to arbitration provided the parties thereto agreed. Under the 1940 Act, the suit was not barred. The court would not automatically refer the dispute to an Arbitral Tribunal. In the event, it having arrived at a satisfaction that there is no sufficient reason that the dispute should not be referred and no step in relation thereto was taken by the applicant, it could stay the suit.

25. Section 8 of the 1996 Act contemplates some departure from Section 34 of the 1940 Act. Whereas Section 34 of the 1940 Act contemplated stay of the suit; Section 8 of the 1996 Act mandates a reference. Exercise of discretion by the judicial authority, which was the hallmark of Section 34 of the 1940 Act, has been taken away under the 1996 Act. The direction to make reference is not only mandatory, but the arbitration proceedings to be commenced or continued and conclusion thereof by an arbitral award remain unhampered by such pendency. (See O.P. Malhotra's The Law and Practice of Arbitration and Conciliation, 2nd End., pp.346-47)"

17. .....

19. .....

20. .....

21. .....

22. Section 8 of the 1996 Act is peremptory in nature. In a case where there exists an arbitration

> agreement, the court is under obligation to refer the parties to arbitration in terms of the arbitration agreement. (See Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums and Rashtriya Ispat Nigam Ltd.) No issue, therefore, would remain to be decided in a suit. Existence of arbitration agreement is not disputed. The High Court, therefore, in our opinion, was right in referring the dispute between the parties to arbitration".

6. In view of the aforesaid legal position and undisputed arbitration agreement existing between the parties, the entire dispute between the parties in this regard is referred to the arbitrator. Shri Pukhraj Salecha, a retired I.A.S. Officer, G-6, Shyam Nagar, Jaipur is appointed by agreement between the parties as sole arbitrator to decide the dispute between the parties. The arbitrator shall be paid the fees of Rs.11,000/- (Rupees : Eleven Thousand Only) to be shared equally by both the parties and he is expected to pass the award expeditiously within three months from today. Both the parties agree to submit their claim and defence within a period of three weeks. The parties shall appear before the said arbitrator in the first instance at the aforesaid address on Tuesday, 18.9.2007 and thereafter the dates and proceedings shall be governed by the said arbitrator. The fees of the arbitrator shall be paid by both

the parties in equal proportion in advance. In case, the arbitrator needs the record of this case, the record of this case including the record of the trial Court may be transmitted to him upon the requisition and the learned arbitrator is expected to transmit back the same after passing of the Award to this Court.

7. Accordingly, this appeal is disposed of. The impugned judgment and decree dated 28.3.1987 is set aside and the matter is referred to the arbitrator under Section 8 of the Arbitration and Conciliation Act, 1996 to be decided by him within a period of three months from today.

[**Dr. Vineet Kothari**],**J.**

S.S.
Jr.P.A.